

A.G Contract No. KR04-1643TRN
ADOT ECS File No. JPA 03-069
Tracs No.: H5118 01C
Project: 095 LA 143
5 Year Item No.: 12705
Section: SR 95 Street Lighting from
Bronco Ave to Bluewater Dr. @
MP 144.49 to MP 145.36

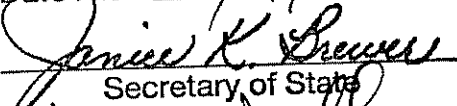
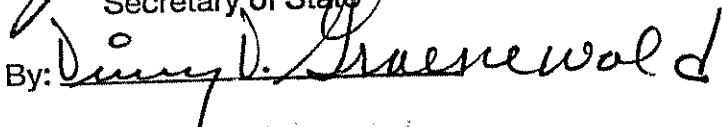
AGREEMENT
AMONG
THE STATE OF ARIZONA
AND
THE DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS
AND
THE COLORADO RIVER INDIAN TRIBES

THIS AGREEMENT is entered into the 14th of January, 2005 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), the UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, acting by and through its Contracting Office (the "BIA") and the COLORADO RIVER INDIAN TRIBES (the "Tribes"), acting by and through its Tribal Council.

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State
2. The Tribal Council of the Tribes is authorized to enter into this Agreement pursuant to Article VI, Section 1(a) of the Tribes' Constitution and Bylaws. The undersigned have been authorized to execute this Agreement on behalf of the Tribes
3. The BIA is empowered by Title 23 U.S.C., Section 204 (B), (C), (D) and Section 308 (A) to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the BIA
4. The State, BIA and the Colorado River Indian Tribe agree to participate in the design and construction of street lighting on a section of roadway on SR 95 from Bronco Avenue to Bluewater Drive beginning at MP 144.49 to MP 145.36, hereinafter referred to as the "Project". The parties hereto agree that the BIA will be responsible for 100% of the cost for design and construction of the Project. The Tribes will be responsible for providing the electrical power and maintenance for all the street lighting elements of the Project perpetually. The State will design and construct the Project.
5. The parties hereto agree and acknowledge to the following conditions: a) The estimated amounts referenced in this agreement are subject to change and can change substantially; b) All parties will perform their responsibilities consistent with the agreement and, c) Any change or modification to the Project will only occur with the mutual Agreement of the BIA, the Tribes and the State

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27322
Filed with the Secretary of State
Date Filed: 01/14/05

Secretary of State
By: 

II. SCOPE OF WORK

1. The State Will:

a. Upon execution of this agreement, invoice the BIA for the estimated amount of \$230,000.00, which is 100% of the estimated costs of the Project including construction engineering and administration costs.

b. Obtain encroachment permits from the BIA necessary for the Project.

c. Grant encroachment permits to the Tribes necessary for providing electrical power and maintenance for all the street lighting elements of the Project perpetually.

d. Prepare design plans, specifications and such other documents and services required for construction bidding and construction. Incorporate or resolve the Tribe's review comments.

e. Call for bids and award one or more construction contract(s) for the Project. Administer same and make all payments to the contractor(s). Confer with the Tribes on any Project-related contract modifications. Be responsible for any design consultant and contractor claims for extra compensation due to delays or whatever reason attributable to the State.

f. Upon completion of the Project, provide the BIA with a final accounting of the estimated costs, along with an invoice or reimbursement, for the difference between the estimated amount paid by the BIA and the actual costs for the Project.

2. The BIA Will:

a. Be responsible for the estimated costs associated with the Project and any increases over the estimated cost of the Project. Be responsible for any contractor claims for extra compensation due to delays or whatever reason, attributable to the BIA and the Tribes.

b. Upon execution of this agreement and after receipt of an invoice from the State, remit an amount of \$230,000.00 for the estimated costs of the Project.

c. Grant the State encroachment permits necessary for the Project and right-of-entry access outside the State right-of-way as required for construction of the Project.

3. The Tribes Will:

a. Review the design documents and provide comments.

b. Obtain encroachment permits from the State necessary for providing electrical power and maintenance for all the street lighting elements of the Project perpetually.

c. After completion and acceptance of the Project, provide for, all at the Tribe's expense, the electrical power and maintenance for all of the street lighting elements of the Project perpetually.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in force and effect until completion and reimbursements; provided herein. However, any provisions for electrical power and maintenance for all the street lighting elements of the Project provided by the Tribes shall be perpetual. This agreement may be cancelled at any time by any party prior to the award of a Project construction contract, upon thirty (30) days

written notice to all parties. The State shall not and will not be responsible for said electrical power and/or maintenance outside the State's right of way of the Project, in the event the Tribes fail to budget for maintenance of said street lighting elements and/or provide electrical power for the street lighting referenced in Recital 4 and Article 3.b. herein.

2. It is understood and agreed to by all parties herein, should the BIA or Tribes cancel this agreement as above written, the BIA will be responsible for all costs incurred by the State for the Project up to the time of cancellation.

3. In the event there are changes in the scope of the work, extra work, or changes in the planned work covered by this agreement, a modification to this agreement in the form of a Construction Change Order issued by the State's Resident Engineer, and signed by representatives of the parties hereto, is required prior to the start of work on said changes or additions.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. Applicable laws and regulations of the State, the Tribes and Federal Government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement, compliant with applicable laws and regulations of the State, the Tribal and the Federal government, and acceptable to the State, the Tribal and the Federal government. Such process shall include a provision for arbitration.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007

Colorado River Indian Tribes
Tribal Chairperson
Route 1 Box 23-B
Parker, AZ 85344

Bureau of Indian Affairs
Vernon Palmer
P.O. Box 10
Phoenix, AZ 85001

9. In accordance with Arizona Revised Statutes Section 11-952(D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

10. Nothing in this Agreement shall be construed to effect or be deemed a waiver of immunity by any party unless specifically provided for herein.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF INDIAN AFFAIRS**

By Wayne Nordwell
Regional Director
Western Regional Office

STATE OF ARIZONA
Department of Transportation

By Douglas A. Forstie
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operation

COLORADO RIVER INDIAN TRIBES

By Daniel Eddy, Jr.
DANIEL EDDY, JR.
Tribal Chairman

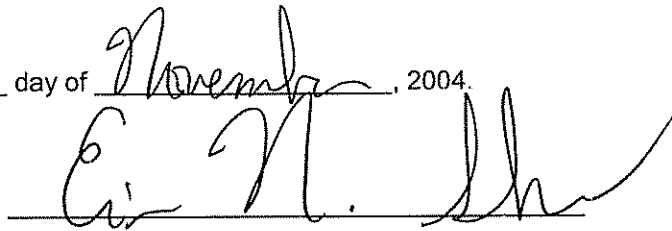
ATTEST

By Sylvia Homer
SYLVIA HOMER
Tribal Secretary

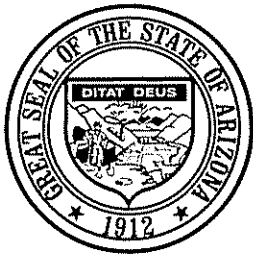
ATTORNEY APPROVAL FORM
FOR THE COLORADO RIVER INDIAN TRIBES

I have reviewed the above-referenced Intergovernmental Agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, the DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS, and the COLORADO RIVER INDIAN TRIBES, which has been reviewed pursuant to A.R.S. Section 11-951 through 11-954, and declare this Agreement to be in proper form and within the powers and the authority of the Tribal Council of the COLORADO RIVER INDIAN TRIBES, granted to it under Article VI, Section 1, lit.a of the Constitution and Bylaws of the COLORADO RIVER INDIAN TRIBES. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 12th day of November, 2004.

A handwritten signature in black ink, appearing to be "C. N. [unclear]", written over a horizontal line.

Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

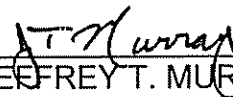
**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR04-1643TRN (**JPA 03-069**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED January 10, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General